

**DOCKET NO.:** \*\*BU-0124  
**Application No.:** 10/609,426  
**Office Action Dated:** March 10, 2009

**PATENT**

**Amendments to the Drawings:**

*Please replace the originally filed drawings with the attached sheets of drawings which include Figures 1, 2, 3, 4, 5A, 5B, 5C, 5D, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16. These sheets include Figures 1, 2, 3, 4, 5A, 5B, 5C, 5D, 6, 7 and 8 as originally filed and Figures 9, 10, 11, 12, 13, 14, 15, and 16 that are described in the amendments to the specification recited above. These sheets replace the original sheets including Figures 1, 2, 3, 4, 5A, 5B, 5C, 5D, 6, 7, and 8.*

**Attachment: Replacement Sheets**

## **REMARKS**

Claims 1-35 are pending in the present application, with claims 1, 13, and 21 being the independent claims. Claims 1, 4-13, 21, 25-32, the specification, and the drawings have been amended. No new matter has been added.

In the office action dated March 10, 2009, claims 1-32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting and claims 1-35 are rejected under 35 U.S.C. §103(a). The outstanding rejections to the claims are respectfully traversed.

### **Examiner Interview**

Applicants thank Examiner Bruckart for conducting an interview with applicants' undersigned representative on May 12, 2009. The examiner and applicants' undersigned representative discussed a draft of the proposed claim amendments and the cited art. A summary of the arguments and traversals presented in the interview is set forth below.

### **Amendments to Specification and Drawings**

Applicants respectfully request that the specification be amended to recite the application number and patent number of an incorporated application in paragraph [0048] of the specification as set forth above.

The specification is amended to explicitly include paragraphs [0048A] – [0048AD] as set forth above. This additional material is adapted from paragraphs [0080]-[0109] of U.S. Patent Application No. 10/609,433, now U.S. Patent No. 7,500,055, which was formerly incorporated by reference as stated in paragraph [0048]. The drawings are also amended to explicitly include Figures 9-16, which are adapted from Figures 9-16 of U.S. Patent Application No. 10/609,433, now U.S. Patent No. 7,500,055, and which are described by the paragraphs added to the specification recited above. No new matter is added.

### **Double Patenting Rejection**

In the office action, claims 1-32 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 21-40 of copending U.S. Patent Application No. 11/468,613. Applicants note that the double

patenting rejection is provisional, and respectfully defer response until the cited application is allowed.

**Rejections under 35 U.S.C. §103**

In the office action, claims 1,2, 4-7, 9-11, 13-19, 21-22, 24-27, 29-31, and 33 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 6,370,584 issued to Bestavros *et al.* (hereinafter “Bestavros”) in view of U.S. Patent No. 6,466,978 issued to Mukherjee *et al.* (hereinafter “Mukherjee”). Applicants respectfully traverse this rejection.

Independent claim 1 has been amended to further clarify the claimed subject matter. Claim 1 recites “detecting the addition of the asset to an adaptable cache on a first server in the plurality of servers; updating a first state table on the first server with information about the asset stored on the adaptable cache; communicating the information about the asset stored on the adaptable cache to each server in the plurality of servers; updating state tables of each of the other servers in the plurality of servers with the information about the asset stored on the adaptable cache”. Claim 1 further recites “determining that the asset is not stored on a director’s adaptable cache by accessing a director’s state table stored on the director, wherein the director’s state table includes parametric information for each server in the plurality of servers, and wherein the parametric information comprises adaptable cache contents information for each server in the plurality of servers; and under the direction of the director, determining a set of servers from among said plurality of servers that have the asset stored in their respective adaptable caches by examining the state table on the director; determining a load factor for each of the set of servers; and selecting a second server from among the set of servers based on the load factor.” Applicants assert that the cited references do not disclose or suggest these elements.

The cited sections of Mukherjee (column 15, line 49 – column 16, line 14) describe adjusting the size of a cluster of servers by looking at the loads of servers in the cluster and adding or subtracting servers to the cluster based on load. The cited sections of Bestavros (column 3, lines 3-21 and lines 35-55) describe each host in a group being capable of servicing requests from client devices and using TCP connection status per client as criteria

for rerouting requests to other hosts. Neither of these cited references disclose or suggest the claimed elements given above.

Because Bestavros and Mukherjee fail to disclose or suggest each every element of claim 1 and the configuration of those elements, Bestavros and Mukherjee cannot be said to disclose or suggest the subject matter of claim 1. For similar reasons, Bestavros and Mukherjee cannot be said to disclose or suggest the subject matter of independent claim 21. Accordingly, applicants respectfully request reconsideration and withdrawal of the rejection of claims 1 and 21 under 35 U.S.C. §103(a).

Dependent claim 9 has also been amended to further clarify the claimed subject matter. Claim 9 recites “storing the asset on the director’s adaptable cache responsive to the request.” The cited section of Bestavros (abstract), as summarized in the office action, describes rejecting a request if it is not available on any servers. Bestavros’ abstract does not disclose or suggest storing the requested content on the director’s adaptable cache responsive to the request. Mukherjee fails to cure this deficiency of Bestavros. Thus, Bestavros and Mukherjee cannot be said to disclose or suggest the subject matter of claim 9. For similar reasons, Bestavros and Mukherjee cannot be said to disclose or suggest the claimed subject matter of claim 29. Accordingly, applicants respectfully request reconsideration and withdrawal of the rejection of claims 9 and 29 under 35 U.S.C. §103(a).

Independent claim 13 has also been amended to further clarify the claimed subject matter. Claim 13 recites “a processor configured to determine that the asset is contained on a storage device and not contained on an adaptable cache, and instruct the communications component to stream the asset from the storage device; and an adaptable cache configured to generate a list of pairs of requests for the asset, determine a pair of requests having the shortest interval between start times, the pair of requests comprising the first request and a second request, store the asset in an adaptable cache storage medium as it is being streamed from the communications component for the first request, and stream the asset from the adaptable cache storage medium for the second request.” Applicants assert that the cited references do not disclose or suggest these elements.

The cited sections of Bestavros (column 3, lines 3-21 and 33-67, and column 4) describe each host in a group being capable of servicing requests from client devices, using TCP connection status per client as criteria for rerouting requests to other hosts, and various

configurations of hosts that may assist in the rerouting scheme described in Bestavros. The cited section of Mukherjee (column 15, lines 20-27 and line 49 – column 16, line 14) describe adjusting a file manager's workload and transmitting a notification of such an adjustment to clients, and adjusting the size of a cluster of servers by looking at the loads of servers in the cluster and adding or subtracting servers to the cluster based on load. Neither of these cited references disclose or suggest the claimed elements of claim 13 given above.

Because Bestavros and Mukherjee fail to disclose or suggest each every element of claim 13 and the configuration of those elements, Bestavros and Mukherjee cannot be said to disclose or suggest the subject matter of claim 13. Accordingly, applicants respectfully request reconsideration and withdrawal of the rejection of claim 13 under 35 U.S.C. §103(a).

Applicants acknowledge that the office action asserts additional grounds for rejection of the remaining claims, all of which are dependent, directly or indirectly, upon claims 1, 13, and 21. However, in view of the traversals set forth with respect to the independent claims, applicants believe that all such dependent claims are in condition for allowance by virtue of their dependence upon independent claims 1, 13, and 21, rendering the rejections of those claims moot. Moreover, applicants submit that the remaining claims recite features that provide a separate basis for patentability. Applicants therefore respectfully request reconsideration and withdrawal of the rejections of all claims that depend from independent claims 1, 13, and 21. Applicants reserve the right to challenge the rejection of any of those dependent claims in any future response that may be forthcoming.

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### **CONCLUSION**

In view of the foregoing, applicants respectfully submit that this application, including claims 1-35, is in condition for allowance. Favorable consideration and prompt allowance are earnestly solicited.

Should the examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the examiner is invited to contact applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,

Date: June 8, 2009

/Aaron F. Bourgeois/  
Aaron F. Bourgeois  
Registration No. 57,936

Woodcock Washburn LLP  
Cira Centre  
2929 Arch Street, 12th Floor  
Philadelphia, PA 19104-2891  
Telephone: (215) 568-3100  
Facsimile: (215) 568-3439